

How do I change custody and child support orders?

Why would I change my court orders?

Maybe when your kids were little, it made sense for the kids to live one week with you and one with your ex. But now, the kids are in school and it's not working. Maybe when you finalized things ten years ago, your spouse had little money. Now, money isn't a problem. Maybe you lost your high-paying job and have a lot less to pay the bills.

Things have changed. How do you change those orders? If your Divorce Decree, Paternity Decree, or Final Order in the Suit Affecting the Parent-Child Relationship no longer works for your family, you can ask the court to change the orders in a ***Suit to Modify the Parent-Child Relationship***.

What if we all agree?

If the other parent agrees to the changes you want, the process is easy. It's important to make the changes in a court order and get a judge to sign them, especially if you're lowering child support. Remember, the person ordered to pay child support (the Obligor) has to keep paying the same amount until the judge changes the orders. So, even if everyone agrees, the judge needs to sign your agreement.

Sometimes, other parties are involved. If the Home-Parent receives any state help like food stamps, TANF or Medicaid or the Attorney General's Office worked on your case before, you may have to include the Attorney General's Office in your case. Contact the Attorney General's Office if you aren't sure whether or not to include them.

How do I start the modification?

The modification process begins with a ***Petition to Modify the Parent-Child Relationship***. Either parent can file the petition.

The person filing the petition becomes the Petitioner in the modification, even if she was the Respondent in the original order.

Where do I file the Petition?

File the Petition in the clerk's office where your original orders were filed. If your children have lived in another county for at least six months, you can ask the court to transfer the case to the children's new home county.

What if my original order is from another state?

Texas courts must respect the orders of other states. Texas courts can't change those orders unless there is an emergency or Texas becomes the child's new "home state." In emergencies, it doesn't matter how long the child has been in Texas. But if it's not an emergency, the child must live in Texas for at least six months before Texas courts can act in the case.

How do I tell the other people involved that I'm asking the court to change the orders?

After you file the Petition, all other parties must either sign a Waiver of Citation in front of a notary, voluntarily file an Answer, or receive Service of Citation by a process server.

Other parties include everyone who was a party in the original order and any adult caregiver who the child has lived with for the last six months.

See ***Giving Legal Notice*** for more information.

What's next, if we all agree?

If all the parties agree to your changes, you'll need to prepare an ***Order in Suit to Modify the Parent-Child Relationship*** with the changes, for the judge to sign. Have all parties sign the orders. Contact the clerk's office in your county to set the hearing (an appointment to see the judge.) Be sure to tell the clerk your case is ***uncontested***, agreed. Some counties have special dockets for uncontested cases.

When the parties agree, there is no waiting period. Set your hearing at your earliest convenience.

What if we disagree?

When you disagree, your case is **contested**. Contested modifications can be very complicated. Consider finding an attorney to help you. If you're asking the court to change your child support order, you may find help at the Attorney General's Office. Legal Aid organizations may be able to help with other changes.

What are the steps in a contested modification for custody or visitation?

In contested custody or visitation cases, you have to prove many things. You must convince the court that:

1. the changes you want are best for the child, **AND**
2. circumstances have materially and substantially changed, **OR**
 - the child is at least 12-years-old and has told the judge (in the judge's chambers), who s/he wants to live with, **OR**
 - the Home-Parent has allowed some one else to have primary custody of the child for at least 6 months. (*This does not apply if the Home-Parent is on active duty military deployment.*)

What if my orders are less than a year old and I want to change custody?

When you file your petition, you must file a sworn statement explaining why one of the following is true:

1. the present environment endangers the child's physical health or impairs the child's emotional development, **OR**
2. the Home-Parent agrees to the changes and the changes are best for the child, **OR**
3. the Home-Parent allowed some one else to have primary custody of the child for at least 6 months, and the changes are best for the child. (*This does not apply if the Home-Parent is on active duty military deployment.*)

The judge will review your statement. If the judge finds your statement lacks the facts to support your charges, the judge will not change your order.

What if the parent with primary custody is active in the military and is deployed?

The court can't *permanently* change custody just because a military parent has been deployed. However, either parent can ask the court for temporary orders that *temporarily* change custody during the deployment.

In this case, the court's first choice for temporary custody must be the other parent. If living with the other parent would not be in the child's best interest, the court's second choice must be a person designated by the military parent. The court's third choice would be a person chosen by the court.

The court may also make temporary changes to child support and visitation. For example, the court may temporarily change who pays child support. Or the military parent may ask the court to allow a designated person, such as a grandparent or step-parent, to visit the child while the military parent is deployed.

When the military deployment ends, the temporary orders end. Custody returns to the military parent and the original child support and visitation orders resume.

What if the parent with visitation rights is deployed?

If the parent with visitation rights is deployed, he or she may ask the court to make temporary orders to allow a designated person, such as a grandparent or step-parent, to take the military parent's visitation with the child while the military parent is gone.

If the parent with visitation rights is deployed, he or she also has the right to ask the court to award make-up periods of visitation after the deployment ends. This must be done within 90 days.

What if it costs more for me to see the kids now that my ex has moved away with them?

The court may change your orders to divide the increased costs fairly. Usually, the court orders the person who moved to pay the extra expenses. The court must believe any changes to the orders are best for the children.

What if I ask to modify because my ex has been convicted of child abuse?

A conviction or deferred adjudication for child abuse is a material and substantial change in circumstances. The court will consider a modification on this ground. But, if you ask for new orders because of child abuse, and you know the party hasn't been convicted or received deferred adjudication for child abuse, you can be charged with a Class B Misdemeanor.

What if I ask for a modification because of family violence?

Family violence is a valid reason for asking for a modification even if the Respondent has never been arrested or prosecuted for family violence. If you are asking for a modification based on family violence, you will need to be able to prove that family violence happened. If the Respondent has been convicted of family violence by a court, state that in your petition. If the Respondent has received deferred adjudication from a court because of family violence, you need to state that in your petition. If the Respondent has not been arrested, prosecuted, or received deferred adjudication because of family violence, you can still ask for a modification based on family violence. Make sure that the facts you state in your petition are truthful. It is a class B misdemeanor to say that a Respondent was convicted of or received deferred adjudication for family violence if that is not true.

What if I want to change my child support orders? What will I need to prove in a contested case?

In a contested child support case, you will have to convince the court that:

1. circumstances have materially and substantially changed, **OR**
2. it's been at least three years since the last child support order, and a new support order, based on child support guidelines, would differ from the last support order by at least 20% or \$100.

What if the prior order wasn't based on child support guidelines?

If your agreed child support order differed from the guidelines, the court may change the order only if:

- 1, you and your ex agree to the change, **OR**

2. the court finds a material and substantial change in circumstances for the parties or the child.

Is my new baby a material and substantial change in circumstances?

If you are the **person paying** child support (the Obligor), your new baby is a material and substantial change in circumstances. The court may consider making a new child support order that takes into account your responsibility to support the new baby.

If you are the **person receiving** child support (the Obligee) and your new baby has the *same* father as your other children, the baby is a material and substantial change in circumstances. You'll need to file a Paternity suit or Suit Affecting the Parent-Child Relationship (SAPCR) combined with a Suit to Modify the Parent-Child Relationship. File the case about your new baby in the same cause number as the order about your other children. The Attorney General's Office may be able to help you with this.

If you are the **person receiving** child support and your new baby has a *different* father, the baby is **not** a material and substantial change. You'll need to ask for child support from your new baby's father in a different case. The Attorney General's Office may be able to help you with this.

If my ex remarries can I include the new spouse's income to get a new child support order?

No. The court can't add a new spouse's income to the Obligor's resources to determine child support. The court can't subtract a new spouse's or step children's financial needs from the Obligor's income, either.

What if I find out that I'm not the child's genetic father, can I stop paying child support?

No, not unless the court orders that you can stop paying child support. You may have the option of asking the court to terminate the parent-child relationship between you and the child if you find out you're not the genetic father and you meet certain other requirements. This would end your obligation to pay future child support, but not your obligation to pay child support you already owe.

See *Mistaken Paternity: Terminating the Parent-Child Relationship in Texas* for more information.